

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
HOMER D. ROBERTS dba ROBERTS )  
CONSTRUCTION COMPANY INC. )  
AND J. GREENFIELD )

PCHB No. 78-263

Appellants, )

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

v. )

PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )

Respondent. )

STATE OF WASHINGTON, )  
DEPARTMENT OF ECOLOGY, )

AMICUS CURIAE. )

This matter, the appeal of two Notices of Violation for dust emission allegedly in violation of respondent's Sections 6.03 (Notice of Construction) and 9.15(a) (Airborne dust) of Regulation I, came on for hearing before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, and Chris Smith, Member, convened at Seattle, Washington on March 27, 1979. Hearing examiner William A. Harrison

WAH/LB

1 presided. Respondent elected a formal hearing pursuant to RCW 43.21B.  
2 230.

3 Appellants appeared by their attorney, James H. Allendoerfer.  
4 Respondent appeared by its attorney, Keith D. McGoffin. Olympia  
5 court reporter Susan Cookman recorded the proceedings.

6 Briefs were submitted by the appellants and by the State of  
7 Washington, Department of Ecology, as Amicus Curiae. Appellants' motion  
8 to exclude Department of Ecology as Amicus Curiae is denied.

9 Witnesses were sworn and testified. Exhibits were examined. Having  
10 heard the testimony, having examined the exhibits, having considered  
11 the briefs submitted and being fully advised, the Pollution Control  
12 Hearings Board makes these

13 FINDINGS OF FACT

14 I

15 Respondent, pursuant to RCW 43.21B.260, has filed with this  
16 Board a certified copy of its Regulation I containing respondent's  
17 regulations and amendments thereto of which official notice is taken.

18 II

19 Appellants are experienced contractors and developers of  
20 recreational camping clubs. In 1977, the appellant Roberts Construction  
21 Company, Inc. (Company) of which Mr. Roberts is President, entered an  
22 agreement with the Tulalip Tribes of Washington (Tribe). Briefly,  
23 the agreement calls for the Company to convey land to the Tribe, for  
24 the Company to develop a camping club thereon, for the Company to  
25 promote sales of camping club memberships and for the proceeds to  
26 be divided between the Company and the Tribe. The principals of the  
27 Company, including Mr. Roberts, are not Indians.

1 The Company owns and operates a rock crusher which produces materials  
2 for the maintenance of roads and campsites of the camping club. At  
3 times pertinent to this appeal, the crusher was operating  
4 on land which the Company previously quit-claimed to the Tribe  
5 (and not to the United States in trust for the Tribe). The  
6 crusher was located within the historical boundary of the  
7 Tulalip Indian Reservation, as is the camping club site.

### 8 III

9 On October 30, 1978, respondent's inspector, while investigating  
10 another matter, observed dust emissions from the Company's rock  
11 crusher. These emissions, visible from 1/2 mile away, rose some  
12 20-25 feet into the air before dissipating from view. There was no  
13 water spray or other system in use to suppress the dust emissions.  
14 The Company had not notified respondent of the installation of the  
15 rock crusher, a new air contaminant source. Respondent's inspector  
16 conversed with the Company's supervising agent at the site, appellant  
17 Greenfield, and the Company later received two Notices of Violation  
18 (Nos. 15907 and 15908) citing violation of Sections 6.03 and 9.15(a) of  
19 respondent's Regulation I. From these, appellants appeal.

### 20 IV

21 Any Conclusion of Law which should be deemed a Finding of Fact  
22 is hereby adopted as such.

23 From these Findings the Board comes to these  
24

25 FINAL FINDINGS OF FACT,  
26 CONCLUSIONS OF LAW  
27 AND ORDER

1 CONCLUSIONS OF LAW

2 I

3 In failing to use a water sprinkling or other system to  
4 suppress dust emissions from the jaws of its crusher, appellants  
5 violated Section 9.15(a) of respondent's Regulation I which requires  
6 reasonable precautions to prevent particulate matter from becoming  
7 airborne. ("Particulate matter" includes dust emissions. Section  
8 1.07(w) of Regulation I.)

9 In failing to file a "Notice of Construction" with respondent  
10 at any time before commencing operation of the rock crusher in  
11 question at this location, appellants violated Section 6.03 of  
12 respondent's Regulation I requiring such notice for new air  
13 contaminant sources. ("Air Contaminant" includes dust. Section  
14 1.07(b) of Regulation I.)

15 Section 3.29 of respondent's Regulation I authorizes a civil  
16 penalty not to exceed \$250 for each violation of a provision of  
17 Regulation I.

18 II

19 Although appellants do not dispute the above violations, they  
20 contend that the Tulalip Tribes, and themselves as Tribal agents,  
21 are immune from respondent's Regulation I or that Regulation I does  
22 not apply on tribal property within the boundaries of an Indian  
23 reservation. We disagree.

24 The Federal Clean Air Act, 42 U.S.C.A. § 7401, et seq., establishes  
25 a national program of air pollution control. See 42 U.S.C.A. § 7401.  
26 There is no express exemption for sources on Indian lands. To the

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 contrary, the Federal Clean Air Act states:

2       Each state shall have the primary responsibility for  
3       assuring air quality within the entire geographic area  
4       comprising such state by submitting an implementation  
5       plan for such state which will specify the manner in which  
6       national primary and secondary ambient air quality  
7       standards will be achieved and maintained within each air  
8       quality control region in such state. 42 U.S.C.A. § 7407(a).  
9       (Emphasis added.)

10 Regulation I of respondent is part of this state's implementation plan  
11 for achieving national ambient air quality standards. Regulation I,  
12 including its civil penalty provision, was approved and adopted for  
13 this purpose by the federal government. 40 CFR 52, Subpart WW.

14 We therefore conclude that appellants, although operating under  
15 Indian contract on Indian land, were subject to the requirements of  
16 respondent's Regulation I and to respondent's enforcement thereof.  
17 M & M Crushing Company, Inc. v. PSAPCA, PCHB No. 78-88 (1978).

### 18 III

19 Any Finding of Fact which should be deemed to be a Conclusion  
20 of Law is hereby adopted as such.

21 From these Conclusions the Board enters this

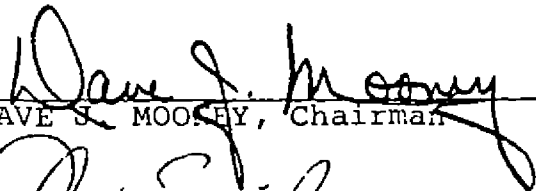
### 22 ORDER

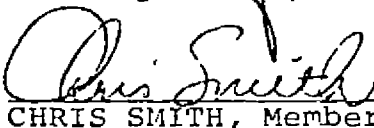
23 The two Notices of Violation (Nos. 15907 and 15908) are  
24 affirmed.

25 FINAL FINDINGS OF FACT,  
26 CONCLUSIONS OF LAW  
27 AND ORDER

1 DATED this 20<sup>TH</sup> day of April, 1979.

2 POLLUTION CONTROL HEARINGS BOARD

3   
4 DAVE S. MOOSEY, Chairman

5   
6 CHRIS SMITH, Member

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW  
AND ORDER